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**APPENDIX**

**Supreme Court of the United States**

OCTOBER TERM, 1968

No. 51

UNITED STATES OF AMERICA, .

*Appellant*

—v.—

JOSEPH FRANCIS NARDELLO and ISADORE WEISBERG

APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE  
EASTERN DISTRICT OF PENNSYLVANIA

FILED MARCH 29, 1968

PROBABLE JURISDICTION NOTED JUNE 17, 1968

# Supreme Court of the United States

OCTOBER TERM, 1968

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UNITED STATES OF AMERICA,

*Appellant*

—v.—

JOSEPH FRANCIS NARDELLO and ISADORE WEISBERG

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EASTERN DISTRICT OF PENNSYLVANIA

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IN UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

CRIMINAL DOCKET

Criminal No. 22709

THE UNITED STATES

v/s.

WILLIAM JOSEPH BURKE, SHERMAN CHADWICK KAMINSKY,  
JOSEPH FRANCIS NARDELLO, ISADORE WEISBERG

Interstate travel in aid of  
racketeering enterprises; conspiracy

DATE	PROCEEDINGS
1966	
Nov. 30	True Bill.
1967	
Feb. 28	Petition and Order for writ of habeas corpus ad pros as to Wm. Joseph Burke, filed. Writ exit
Mar. 3	Defendant William Joseph Burke sworn and testi- fies as to his financial responsibility. The Court ap- points Melvin Dildine to represent deft under the Criminal Justice Act of 1964
Mar. 3	PLEAS: Wm. Joseph Burke—NOT GUILTY on Counts 1 and 2 Joseph Francis Nardello—NOT GUILTY on Count 2 Isadore Weisberg—NOT GUILTY on Count 2
Mar. 3	Defendant Sherman Chadwick Kaminsky called and not appearing, bail forfeited and bench war- rant to issue Warrant exit
Mar. 3	Appearance of F. Emmett Fitzpatrick, Jr., Esq., for Isadore Weisberg, filed.

## DATE

## PROCEEDINGS

1967/

- Mar. 8 Appearance of Domenick Vitullo, Esq., for Joseph F. Nardello, filed.
- Mar. 8 Bond of Sherman Chadwick Kaminsky in the sum of \$10,000.00, with the Prudence Mutual Casualty Co. as surety, transferred to this case from C.R. 18488.
- Mar. 8 Order of Court appointing Voluntary Defender to represent Wm. Joa. Burke under the Criminal Justice Act of 1964, filed.
- Mar. 15 Motion of Isadore Weisberg to dismiss indictment, filed.
- Mar. 15 Motion of Joseph Francis Nardello to dismiss indictment, filed.
- Apr. 7 Arraignment continued
- Apr. 12 Court Reporter's tape as to W. J. Burke et al (pleas) 3/3/67 filed in special envelope No. 180
- Apr. 17 Writ of Habeas Corpus returned "on 4-13-67 produced" and filed.
- Apr. 23 Transcript of 4-7-67 filed.
- Aug. 8 Argued sur defts. Weisburg and Nardello's motions to dismiss Indictment C.A.V. CW

1968

- Jan. 4 Opinion, Weiner, J. and Order (dated 1/2/68) Granting motions of Defta. Isadore Weisberg and J. F. Nardello to dismiss, and dismissing indictment as to those two defts., filed. CRW  
(1/5/68 entered and notice mailed)
- Jan. 8 Notice of appeal of U.S. Government, filed. (Copy mailed to F. Emmett Fitzpatrick, Jr., Esq. and A. Charles Peruto, Esq. and Melvin Dildine, Esq.)
- Jan. 8 Copy of Statement of Docket Entries filed.



## DATE

## PROCEEDINGS

1968

- Jan. 30 Govt's notice of appeal to the Supreme Court of the U.S., filed. Proof of service, filed.
- Mar. 22 Certified copy of Order of U.S. Court of Appeals dismissing appeal as to Joseph Francis Nardello, filed.
- Mar. 22 Certified copy of Order of U.S. Court of Appeals dismissing appeal of Govt as to Isadore Weisberg, filed.
- Mar. 26 Certified copy of record transmitted to the United States Supreme Court.
- June 21 Certified copy of Order of Supreme Court of U.S. noting probable jurisdiction, filed.

**CRIMINAL DOCKET**

**Criminal No. 22717**

**THE UNITED STATES**

**vs.**

**SHERMAN CHADWICK KAMINSKY, ELWOOD LEE HAMMOCK,  
KENNETH WARREN SMITH, JOSEPH FRANCIS NARDELLO,  
CHARLES ANDERSON**

**Interstate travel in aid of  
racketeering enterprises; conspiracy**

**DATE**

**PROCEEDINGS**

**1966**

**Nov. 30 True Bill.**

**1967**

**Mar. 3 Defendant Charles Anderson sworn and testifies as  
to his financial responsibility. The Court appoints  
Melvin Dildine, Esq., to represent deft under the  
Criminal Justice Act of 1964**

**Mar. 3 PLEAS:**

**Joseph Francis Nardello—NOT GUILTY on  
Counts 1 and 2**

**Charles Anderson—GUILTY on Count 2**

**Kenneth Warren Smith—NOT GUILTY on  
Counts 1 and 2**

**Bail as to Kenneth W. Smith reduced from  
\$7500.00 to \$2500.00 good bail.**

**Charles Anderson continued on own bond**

**Arraignment continued as to Hammock**

**Mar. 3 Defendant Sherman Cadwick Kaminsky called and  
not appearing, bail forfeited and bench warrant to  
issue Warrant exit**

**Mar. 3 Appearance of A. Charles Peruto, Esq., for J. F.  
Nardello, filed.**

## DATE

## PROCEEDINGS

1967

Mar. 3 Bond of defendant Sherman Chadwick Kaminsky in the sum of \$10,000.00, with the Prudence Mutual Casualty Co. as surety, transferred to this case from C.R. 18438

Mar. 8 Order of Court appointing Voluntary Defender to represent Charles Anderson under the Criminal Justice Act of 1964, filed. FVD

Mar. 8 Order of Court appointing Voluntary Defender to represent Kenneth Warren Smith under the Criminal Justice Act of 1964, filed. FVD

Mar. 15 Motion of Joseph Francis Nardello to dismiss indictment, filed.

Apr. 12 Court Reporter's tape re pleas, 3/3/67, filed in special envelope No. 130.

Apr. 28 Sentence as to Charles Anderson continued FVD

May 19 SENTENCE as to Charles Anderson. FVD  
Count 2—Imprisonment for 5 years for study under 18 USC 4208(b), report to be furnished to the Court within 3 months

May 19 Consent to transfer case of U.S. vs. Elwood Lee Hammock under Rule 20 to the USDC for the Southern District of NEW York, filed.

May 24 Certified copies of indictment and consent to transfer under Rule 20 as to Elwood Lee Hammock mailed to U.S.D.C. for the Southern District of New York

June 15 Judgment and Commitment as to Charles Anderson, filed. FVD

June 23 Judgment and Commitment as to C. Anderson returned "on 6-21-67 delivered" and filed.

July 17 Court Reporter's tape re sentencing of C. Anderson of May 19, 1967 filed in special envelope No. 136.



## DATE

## PROCEEDINGS

1967

- July 17 Court Reporter's tape of Sentence continued, of C. Anderson of April 28, 1967 filed in special envelope. No. 187
- Aug. 8 Argued sur: deft. Nardello's motion to dismiss Indictment C.A.V. CW
- Aug. 23 FINAL SENTENCE: as to Charles Anderson  
Imposition of sentence suspended—probation  
five years beginning as of 5/19/67 FVD
- Aug. 25 Order re final sentence as to Charles Anderson, imposed 8/23/67, filed. FVD
- Nov. 7 Transcript of 8/23/67, filed.
- Nov. 14 Order transferring jurisdiction of probationer Charles Anderson to USDC for the Northern District of Alabama, filed. FVD
- Nov. 16 Certified copy of record as to Charles Anderson mail to Clerk, USDC for the Northern District of Alabama at Birmingham, Ala.

1968

- Jan. 4 Copy of Opinion, Weiner, J. and Order (dated 1/2/68) Granting motion to deft. J. F. Nardello to dismiss, and dismissing indictment as to this deft., filed. (1/5/68 entered and notice mailed)  
CRW
- Jan. 8 Copy of Notice of appeal of U.S. Government, filed. (Copies mailed to A. Charles Peruto, Esq. and Melvin Dildine, Esq.) (Original filed in #22709)
- Jan. 8 Copy of Statement of Docket Entries, filed.
- Jan. 30 Copy of Govt's notice of appeal to the Supreme Court of the U.S., filed. (Crim. #22709 original)
- Mar. 22 Copy of Order of U.S. Court of Appeals dismissing appeal of Govt as to Joseph Francis Nardello, filed.
- Mar. 26 Certified copy of record transmitted to the Supreme Court of the United States
- June 21 Certified copy of Order of Supreme Court of U.S. noting probable jurisdiction, filed. (22709)

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**CRIMINAL DOCKET**

**Criminal No. 22718**

**THE UNITED STATES**

**vs.**

**SHERMAN CHADWICK KAMINSKY, ISADORE WEISBERG,  
JOSEPH FRANCIS NARDELLO**

**Interstate travel in aid of  
racketeering enterprises; conspiracy**

<b>DATE</b>	<b>PROCEEDINGS</b>
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**1966**

Nov. 30	True Bill.
Nov. 30	Motion and Order for bench warrant as to Isadore Weisberg filed. Warrant exit. CWK
Dec. 1	Bond of Isadore Weisberg in the sum of \$1000.00, with the Southern General Ins. Co. as surety, filed.
Dec. 5	Warrant as to Isadore Weisberg returned: "Executed", and filed.

**1967**

Mar. 3	PLEAS: Isadore Weisberg—NOT GUILTY on Count 2 FVD Joseph Francis Nardello—NOT GUILTY on Count 2 Both defendants have two weeks to file any motions
Mar. 3	Sherman Chadwick Kaminsky called and not appearing, bail forfeited and bench warrant to issue Warrant exit FVD
Mar. 3	Appearance of F. Emmett Fitzpatrick, Jr., Esq., for Isadore Weisberg, filed. (#22709)

## DATE

## PROCEEDINGS

1967

- Mar. 8 Appearance of A. Charles Peruto, Esq., for J. F. Nardello, filed.
- Mar. 8 Bond of Sherman Chadwick Kaminsky in the sum of \$10,000.00, with the Prudence Mutual Casualty Co. as surety, transferred to this case from C.R. 18438.
- Mar. 15 Motion of Isadore Weinberg to dismiss indictment, filed.
- Mar. 15 Motion of Joseph F. Nardello to dismiss indictment, filed.
- Aug. 8 Argued sur: motions of defts. Weisburg & Nardello to dismiss indictment C.A.V. CRW

1968

- Jan. 4 Copy of Opinion, Weiner, J. and Order (dated 1/2/68) Granting motion of defts Isadore Weisburg and J. F. Nardello to dismiss, and dismissing indictment as these two defts., filed. (1/5/68 entered and notice mailed) CRW
- Jan. 8 Copy of Notice of appeal of U.S. Government, filed. (Copies mailed to A. Charles Peruto and F. Emmett Fitzpatrick, Jr., Esqs.) (Original filed in #22709)
- Jan. 8 Copy of Statement of Docket Entries, filed.
- Jan. 30 Copy of Govt's notice of appeal to the Supreme Court of the U.S., filed. (Original #22709)
- Mar. 22 Copy of Order of U.S. Court of Appeals dismissing appeal of gvt as to Joseph Francis Nardello, filed.
- Mar. 22 Copy of Order of U.S. Court of Appeals dismissing appeal of govt as to Isadore Weisberg, filed.
- Mar. 26 Certified copy of record transmitted to the Supreme Court of the United States
- June 21 Certified copy of Order of Supreme Court of U.S. noting probable jurisdiction, filed. (22709)

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**IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

**Criminal No. 22709**

**Filed: 11-30-66**

**UNITED STATES OF AMERICA**

**v.**

**WILLIAM JOSEPH BURKE, SHERMAN CHADWICK KAMINSKY,  
JOSEPH FRANCIS NARDELLO, ISADORE WEISBERG**

**Interstate travel in aid of  
racketeering enterprises; conspiracy**

**INDICTMENT**

**COUNT I**

**THE GRAND JURY CHARGES:**

That on or about the 1st day of June, 1964, in the Eastern District of Pennsylvania, the defendants, WILLIAM JOSEPH BURKE and SHERMAN CHADWICK KAMINSKY, did knowingly, wilfully and unlawfully travel in interstate commerce from Chicago, Illinois to Philadelphia, in the Eastern District of Pennsylvania, with intent to promote, manage, establish, carry on, and facilitate the promotion, management, establishment, and carrying on of an unlawful activity, to wit, blackmail by injuring the reputation and business, in violation of Section 4802 of the Pennsylvania Penal Code and blackmail by accusation of a heinous crime, in violation of Section 4803 of the Pennsylvania Penal Code; and, thereafter, the defendants, WILLIAM JOSEPH BURKE and SHERMAN CHADWICK KAMINSKY, did perform and attempt to perform acts to promote, manage, establish, carry on, and facilitate the promotion, management, establishment, and carrying on of said unlawful activity.

In violation of Title 18 United States Code, Section 1952.

COUNT II

THE GRAND JURY FURTHER CHARGES:

1. From on or about the 25th day of May, 1964, and up to and including the 8th day of June, in the Eastern District of Pennsylvania and elsewhere, the defendants, SHERMAN CHADWICK KAMINSKY, JOSEPH FRANCIS NARDELLO, ISADORE WEISBERG, and WILLIAM JOSEPH BURKE, hereinafter called defendants, unlawfully, wilfully and knowingly did combine, conspire, confederate and agree together and with each other, to commit offenses against the United States, in violation of Title 18 United States Code, Section 1952 and Section 2.
2. It was part of the said conspiracy that the defendants met together and discussed the extortion of a victim.
3. It was further a part of said conspiracy that the defendants, SHERMAN CHADWICK KAMINSKY, JOSEPH FRANCIS NARDELLO, ISADORE WEISBERG, and WILLIAM JOSEPH BURKE travelled to Easton, Pennsylvania, and met with the victim.
4. It was further a part of the said conspiracy that the defendants, SHERMAN CHADWICK KAMINSKY and WILLIAM JOSEPH BURKE represented to the victim that they were detectives of the Philadelphia Department of Police and had a warrant for his immediate arrest.
5. It was further a part of the said conspiracy that the defendants did travel in interstate commerce and use facilities in interstate commerce, with intent to promote, manage, establish, carry on, and facilitate the promotion, management, establishment, and carrying on of the unlawful activity of blackmail, in violation of the laws of the Commonwealth of Pennsylvania; and, thereafter, the defendants did perform and attempt to perform acts facilitating the promotion, management, establishment, and carrying on of said unlawful activity.



**OVERT ACTS**

In furtherance of said conspiracy and to effect the objects thereof, the defendants did commit the following overt acts, among others, in the Eastern District of Pennsylvania and elsewhere:

1. That on the 25th day of May, 1964, SHERMAN CHADWICK KAMINSKY, JOSEPH FRANCIS NARDELLO and WILLIAM JOSEPH BURKE met.

2. On the 1st day of June, 1964, SHERMAN CHADWICK KAMINSKY, JOSEPH FRANCIS NARDELLO, WILLIAM JOSEPH BURKE, and ISADORE WEISBERG met with the aforesaid victim.

3. That on or about the 2nd day of June, 1964, SHERMAN CHADWICK KAMINSKY, ISADORE WEISBERG, JOSEPH FRANCIS NARDELLO and WILLIAM JOSEPH BURKE obtained \$5,000.00 from the aforesaid victim.

In violation of Title 18 United States Code, Section 371 and Section 2.

~~A TRUE BILL:~~

(s)

Foreman

(s)

DREW J. T. O'KEEFE  
United States Attorney

IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

Criminal No. 22717

Filed: 11-30-66

UNITED STATES OF AMERICA

v.

SHERMAN CHADWICK KAMINSKY, ELWOOD LEE HAMMOCK,  
KENNETH WARREN SMITH, JOSEPH FRANCIS NARDELLO,  
CHARLES ANDERSON

Interstate travel in aid of  
racketeering enterprises; conspiracy

INDICTMENT

COUNT I

THE GRAND JURY CHARGES:

That on or about the 6th day of August, 1965, in the Eastern District of Pennsylvania, the defendants, SHERMAN CHADWICK KAMINSKY, ELWOOD LEE HAMMOCK, KENNETH WARREN SMITH, and JOSEPH FRANCIS NARDELLO, did knowingly, wilfully and unlawfully travel in interstate commerce from New Jersey to Philadelphia, in the Eastern District of Pennsylvania, with intent to promote, manage, establish, carry on, and facilitate the promotion, management, establishment, and carrying on of an unlawful activity, to wit, blackmail by injuring the reputation and business, in violation of Section 4802 of the Pennsylvania Penal Code and blackmail by accusation of a heinous crime, in violation of Section 4803 of the Pennsylvania Penal Code; and, thereafter, the defendants, SHERMAN CHADWICK KAMINSKY, ELWOOD LEE HAMMOCK, KENNETH WARREN SMITH, and JOSEPH FRANCIS NARDELLO did perform and attempt to perform acts to promote, manage, establish, carry on, and facilitate the promotion, management, establishment and carrying on of said unlawful activity.

In violation of Title 18 United States Code, Section 1952.

COUNT II

THE GRAND JURY FURTHER CHARGES:

1. From on or about the 2nd day of August, 1965, up to and including the 6th day of August, 1965, in the Eastern District of Pennsylvania and elsewhere, SHERMAN CHADWICK KAMINSKY, ELWOOD LEE HAMMOCK, KENNETH WARREN SMITH, JOSEPH FRANCIS NARDELLO and CHARLES ANDERSON, hereinafter called defendants, unlawfully, wilfully and knowingly did combine, conspire, confederate and agree together and with each other, to commit offenses against the United States, in violation of 18 United States Code, Section 1952 and Section 2.

2. It was part of the said conspiracy that the defendants did meet together and discuss possible extortion victims in the Philadelphia area.

3. It was further part of the said conspiracy that CHARLES ANDERSON, defendant and co-conspirator, did obtain a compromising position with a victim and thereafter take from said victim his identification papers and wallet.

4. It was further a part of the said conspiracy that the defendant CHARLES ANDERSON did deliver the identity papers and wallet of the victim to the defendants, SHERMAN CHADWICK KAMINSKY, ELWOOD LEE HAMMOCK, KENNETH WARREN SMITH, and JOSEPH FRANCIS NARDELLO.

5. It was further a part of the said conspiracy that the defendants, SHERMAN CHADWICK KAMINSKY, ELWOOD HAMMOCK, and KENNETH WARREN SMITH, did exhibit to the said victim false credentials of the Philadelphia Police Department and purport to have a warrant for the arrest of said victim.

6. It was further a part of the said conspiracy that the defendants did travel in interstate commerce and use facilities in interstate commerce, with intent to promote, manage, establish, carry on and facilitate the promotion, management, establishment, and carrying on of the un-

lawful activity of blackmail, in violation of the laws of the Commonwealth of Pennsylvania, and thereafter, the defendants did perform and attempt to perform acts facilitating the promotion, management, establishment and carrying on of said unlawful activity.

### OVERT ACTS

In furtherance of said conspiracy and to effect the objects thereof, the defendants did commit the following overt acts, among others, in the Eastern District of Pennsylvania and elsewhere:

1. That on about the 2nd day of August, 1965, the defendants, SHERMAN CHADWICK KAMINSKY, ELWOOD LEE HAMMOCK, KENNETH WARREN SMITH, JOSEPH FRANCIS NARDELLO and CHARLES ANDERSON, met at the Wilson Motel in Camden, New Jersey.

2. On or about the 4th day of August, 1965, the defendant, CHARLES ANDERSON, obtained the wallet and identification papers of the aforementioned victim and delivered this wallet and papers to the defendants, SHERMAN CHADWICK KAMINSKY, ELWOOD LEE HAMMOCK, KENNETH WARREN SMITH, and JOSEPH FRANCIS NARDELLO.

3. On or about the 6th day of August, 1965, the defendants, SHERMAN CHADWICK KAMINSKY, ELWOOD LEE HAMMOCK, KENNETH WARREN SMITH, and JOSEPH FRANCIS NARDELLO, drove from Camden, New Jersey to Philadelphia, Pennsylvania, and the defendants KAMINSKY, HAMMOCK and SMITH had a conversation with the victim.

In violation of Title 18 United States Code, Section 871 and Section 2.

A TRUE BILL:

(s)

Foreman

(s)

DREW J. T. O'KEEFE  
United States Attorney



IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

Criminal No. 22718-

Filed: 11-30-66

UNITED STATES OF AMERICA

v.

SHERMAN CHADWICK KAMINSKY, ISADORE WEISBERG,  
JOSEPH FRANCIS NARDELLO

Interstate travel in aid of  
racketeering enterprises; conspiracy

INDICTMENT

COUNT I

THE GRAND JURY CHARGES:

That on or about the 13th day of May, 1965, in the Eastern District of Pennsylvania, SHERMAN CHADWICK KAMINSKY, defendant, did knowingly, wilfully, and unlawfully travel in interstate commerce from Chicago, Illinois to Philadelphia, in the Eastern District of Pennsylvania, with intent to promote, manage, establish, carry on, and facilitate the promotion, management, establishment, and carrying on of an unlawful activity, to wit, blackmail by injuring the reputation and business, in violation of Section 4802 of the Pennsylvania Penal Code and blackmail by accusation of a heinous crime, in violation of Section 4803 of the Pennsylvania Penal Code; and, thereafter, the defendant, SHERMAN CHADWICK KAMINSKY, did perform and attempt to perform acts to promote, manage, establish, carry on, and facilitate the promotion, management, establishment and carrying on of said unlawful activity.

In violation of Title 18 United States Code, Section 1952.



## COUNT II

## THE GRAND JURY FURTHER CHARGES:

1. From on or about the 10th day of May 1965, and up to and including the 15th day of May, 1965, in the Eastern District of Pennsylvania and elsewhere, SHERMAN CHADWICK KAMINSKY, ISADORE WEISBERG, and JOSEPH FRANCIS NARDELLO, hereinafter called defendants, unlawfully, wilfully, and knowingly did combine, conspire, confederate and agree together and with each other, to commit offenses against the United States, in violation of 18 United States Code, Section 1952 and Section 2.
2. It was part of the said conspiracy that the defendant, JOSEPH FRANCIS NARDELLO, did telephone the defendant, SHERMAN CHADWICK KAMINSKY, for the purpose of acquainting himself with a potential extortion victim in the Philadelphia area.
3. It was further a part of the said conspiracy that ISADORE WEISBERG did meet with SHERMAN CHADWICK KAMINSKY at the defendant, NARDELLO's office for the purpose of acquainting KAMINSKY with the background of a potential victim.
4. It was further a part of the said conspiracy that the defendant, SHERMAN CHADWICK KAMINSKY, did exhibit to the said victim false credentials of the Philadelphia Police Department and indicate to the victim that he was subject to immediate arrest.
5. It was further a part of said conspiracy that the defendants did travel in interstate commerce and use facilities in interstate commerce, with intent to promote, manage, establish, carry on, and facilitate the promotion, management, establishment, and carrying on of the unlawful activity of blackmail, in violation of the laws of the Commonwealth of Pennsylvania; and, thereafter, the defendants did perform and attempt to perform acts, facilitating the promotion, management, establishment, and carrying on of said unlawful activity.

**OVERT ACTS**

In furtherance of said conspiracy and to effect the objects thereof, the defendants did commit the following overt acts, among others, in the Eastern District of Pennsylvania and elsewhere:

1. On or about the 12th day of May, 1965, JOSEPH FRANCIS NARDELLO placed a telephone call to SHERMAN CHADWICK KAMINSKY.

2. On or about the 13th day of May, 1965, SHERMAN CHADWICK KAMINSKY met with ISADORE WEISBERG in defendant NARDELLO's office in Philadelphia, Pennsylvania.

3. On or about the 14th day of May, 1965, SHERMAN CHADWICK KAMINSKY met with the aforesaid victim.

In violation of Title 18 United States Code, Section 371 and Section 2.

**A TRUE BILL:**

(s)

**Foreman**

(s)

**DREW J. T. O'KEEFE**  
**United States Attorney**

IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF PENNSYLVANIA DIVISION

No. 22709, 22717, 22718

UNITED STATES OF AMERICA

vs.

WILLIAM JOSEPH BURKE, SHERMAN CHADWICK KAMINSKY,  
JOSEPH FRANCIS NARDELLO, ISADORE WEISBERG

MOTION TO DISMISS INDICTMENT

The defendant, Joseph Francis Nardello, by his attorney A. Charles Peruto, Esquire, moves that the above indictments be dismissed on the following grounds:

1. The indictments do not state facts sufficient to constitute an offense against the United States.

(s) A. Charles Peruto  
A. CHARLES PERUTO, ESQUIRE  
202-04 North Broad Street  
Philadelphia, Pa. 19102

IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF PENNSYLVANIA DIVISION

No. 22709, 22718

UNITED STATES OF AMERICA

vs.

WILLIAM JOSEPH BURKE, SHERMAN CHADWICK KAMINSKY,  
JOSEPH FRANCIS NARDELLO, ISADORE WEISBERG

MOTION TO DISMISS INDICTMENT

The defendant, Isadore Weisberg, by his attorney F. Emmett Fitzpatrick, Jr., Esquire, moves that the above indictments be dismissed on the following grounds:

1. The indictments do not state facts sufficient to constitute an offense against the United States.

(s) F. Emmett Fitzpatrick, Jr.  
F. EMMETT FITZPATRICK, JR., ESQ.  
12 South 12th Street  
Room 1505  
Philadelphia, Pa. 19107

IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

Criminal Nos. 22709,  
22717,  
22718

UNITED STATES OF AMERICA

v.

WILLIAM JOSEPH BURKE, SHERMAN CHADWICK KAMINSKY,  
JOSEPH FRANCIS NARDELLO, ISADORE WEISBERG

OPINION

WEINER, J.

JANUARY 2, 1968

Defendants herein were indicted and charged for the federal offenses of promoting and conspiring to promote extortion under state law, 18 U.S.C. §§ 1952, 871, and 2. Defendants subjected themselves to federal jurisdiction by their interstate travel for the purpose of carrying on their alleged enterprise, 18 U.S.C. § 1952(a).

The validity of this indictment raises squarely a question of statutory construction.

Defendants were allegedly involved in an interstate ring specializing in the "shaking down" of certain prominent victims whom members of the ring would entice into a compromising homosexual experience and then threaten with exposure unless a price were met. The indictments, which defendants here move to dismiss, were drawn under a statute which in terms prohibits interstate travel "in aid of racketeering enterprises," 18 U.S.C. § 1952(a). The statute further focuses, in pertinent part, on those who cross state lines with criminal intent and thereafter perform or attempt to perform:

(2) extortion, bribery, or arson in violation of the laws of the State in which committed or of the United States.



18 U.S.C. § 1952(b) (2). Whether defendants' alleged activity is federally proscribed can be resolved only through analysis of the statutory language and legislative history.

The anti-racketeering statute, as it applies to the present defendants, defines the federal offense of extortion by reference to the standards of Pennsylvania law. Hence to understand fully the scope of the federal crime we must examine separately both the degree of particularity with which § 1952 incorporates the state law and the substantive meaning of the incorporated Pennsylvania crime of extortion.

Section 1952, as a result of legislative compromise, is disjunctively worded so as to cover several discontinuous areas of crime. As the successive Congressional discussions show, the anti-racketeering bill, S. 1653, began with the language that was ultimately enacted into law and which proscribed, broadly, "extortion or bribery in violation of the laws of the State in which committed . . . ." 107 Cong. Rec. 13,942 (July 28, 1961). Ultimately rejected was an intermediate version which would have restricted the prohibited activity to extortion or bribery "in connection with" the crimes enumerated in the prior subsection of the statute, *viz.*, "gambling, liquor, narcotics, or prostitution offenses," Cong. Rec. 16,809 (August 23, 1961).

Lest this progression of draft versions be construed to evince a legislative intent to lend a broader reach to the final statute than its language would reasonably suggest, the House and Senate Hearings consistently show what the words of the statute themselves attest: that the incorporation of state definitions for the crimes of extortion and bribery was enacted with the expectation that their content would differ substantively from state to state.<sup>1</sup> The term "extortion" in 18 U.S.C. § 1952 was

<sup>1</sup> The Department of Justice, for example, justified before the House Committee that it anticipated that a gambler travelling from Nevada (where gambling is lawful) to Colorado (where it is not) would not come within the reach of § 1952; travel in the opposite direction, however, would bring him within the ambit of the statute. *Hearings on H.R. 6572 before Subcomm. No. 5 of the*

thus intended to track closely the legal understanding under state law, and was not designed to be more generic in scope." As was said in a recent case under § 1952, "[r]eference to the state law is necessary . . . to identify the type of unlawful activity in which the accused was [or was not] engaged," *McIntosh v. United States*, No. 18,597 (8th Cir., November 18, 1967) at 5. The Pennsylvania definition of extortion, therefore, is strictly controlling in the instant case.

In Pennsylvania, the crime of extortion is committed, specifically, only by

Whoever, being a public officer, wilfully and fraudulently receives or takes any reward or fee to execute and do his duty and office . . . .

18 P.S. § 4318. Since none of the defendants was a public officer (although two did pose as members of the Philadelphia Police Department), the state crimes with which they were charged are those of Blackmail by injury to reputation or business, 18 P.S. 4802; and Blackmail by accusation of heinous crime, 18 P.S. 4803. It is the Government's contention that these crimes fall within the scope of "extortion" as intended by 18 U.S.C. § 1952.

It is true that the terms "extortion" and "blackmail" are often confused in statutory, judicial, and common, language. The Pennsylvania crime of blackmail itself is defined as being committed, *inter alia*, by "[w]hoever by means of written, printed or oral communications . . . extorts money . . ." 18 P.S. § 4801 (emphasis supplied).

What dicta there is in the Pennsylvania cases tending to equate the crimes of extortion and blackmail is sparse,

*House Comm. on the Judiciary*, 87th Cong. 1st Sess. at 340-41 (May 1961). Indeed, earlier in a prepared statement before the Committee, the Department of Justice had described the aim of the bill as being "to bolster local law enforcement authorities . . ." *Id.* at 334.

\* Cf. the careful analysis of an analogous problem of statutory interpretation wherein Judge Higginbotham reaches the contrary conclusion as to the content lent by "federal usage" to the term "harassment" contained in § 504 of the Labor-Management Reporting Act, 29 U.S.C. § 504, in *Berman v. Teamsters Local 107*, 237 F. Supp. 767, 772-73 (E.D. Pa. 1964).

unsupported, and seems carelessly drawn. In *Commonwealth v. Kirk*, 141 Pa. Super. 128, *aff'd* 340 Pa. 346 (1940), it is said, at 136, that:

... extortion is made a misdemeanor by Act of June 9, 1911, P.L. 833, 18 PS § 2932; *Com. v. Miller*, 94 Pa. Superior Ct. 499, 507, 508 [1928]; *Com. v. McHale*, 97 Pa. 407, 410 [1881].

The statute cited therein was the predecessor to the current blackmail statute, 18 P.S. § 4801. In *Kirk*, however, as well as in *Miller* and *McHale*, the defendant and/or his associate was a public officer. There is an inferential allusion to the interchangeability of blackmail and extortion in Pennsylvania, without any cited support, in *Commonwealth v. Downer*, 159 Pa. Super. 626, 632 (1946), and *Commonwealth v. Neubauer*, 142 Pa. Super. 528, 530 (1940). *Commonwealth v. Hoagland*, 93 Pa. Super. 274 (1928), seems more accurate, however, where it distinguishes the blackmail statute from common law extortion, by saying, at 276:

The offense prohibited by that statute [P.L. 833] is not common law extortion. The statute makes the acts therein described misdemeanors whether committed under color of office or not.

And *Commonwealth v. Nathan*, 93 Pa. Super. 193 (1928) appears simply in error as to the statutory law, where it reports, at 197:

In common understanding, blackmail and extortion describe the same conduct. While extortion at common law was an offense committed [sic] by an officer under color of his office, the term has a broader significance in modern legislation and applies to persons who exact money either for the performance of a duty, the prevention of injury, or the exercise of influence.

*Contra*, 18 P.S. § 4318.

In summary, then, to commit the crime of extortion in Pennsylvania, it is no less a prerequisite that the actor be a public officer because the verb "extort" has a more



generic meaning in common understanding. The crime of extortion which is "in violation of the laws of the State in which" defendants allegedly carried on their activity is committed in Pennsylvania only by "[w]hoever, being a public officer . . . takes any reward or fee . . . ." Defendants are not within this class of persons. That they do not come within the ambit of the federal statute, predicated as it is upon state criminal definitions, is compellingly clear.

Having been constrained to reach this conclusion, we find one further comment in order. Defendants' "shake-down" activities, as alleged in the federal indictments, are evidently obnoxious to society. They fall easily within the category of conduct that is wrong on its face, or *malum in se*; and it is only an anomaly of the law that they are not legally proscribed, or *mala prohibita*. This is the vice of the law as it is presently written; and not the virtue of the acts as allegedly performed.

Criticism of the awkward reach of 18 U.S.C. § 1952 was not lacking when that act was under consideration by Congress. One of the most telling comments as to the act's weakness in just such a case as the present one came from a letter by the eminent penologist and authority on federal jurisprudence, Professor Herbert Wechsler:

I have examined the bills and find that, on the whole, they represent what I believe to be an uncritical and poorly defined extension of the Federal criminal law . . . . My point is . . . that I think it should be possible to define distinctive Federal offenses with clarity and precision, or alternatively, to limit Federal action to the creation of a Federal jurisdiction which, when exercised by instituting a prosecution, would be preemptive of State prosecution for the same crime.

*Hearings on H.R. 6572 before Subcomm. No. 5 of the House Comm. on the Judiciary, 87th Cong. 1st Sess. at 75 (May 1961).* An evident source easily available for a federal definition of extortion in § 1952 would have been 18 U.S.C. § 1951(b) (2), where the earlier companion

statute laid out the meaning of extortion for the purpose of that section:

(2) The term "extortion" means the obtaining of property from another, with his consent, induced by wrongful use of actual or threatened force, violence, or fear, or under color of official right.

Section 1952 seems inadequately drawn for the purposes of covering criminal activity other than the "gambling, liquor, narcotics, or prostitution" with which the enacting Congress was really concerned at the time and which have been given federally enacted content. As a result of this flaw in conception and draftsmanship, § 1952 does not include extortionary activity such as alleged herein which is committed in those states, such as Pennsylvania, where extortion is defined with reference only to public officials.

#### ORDER

AND NOW, January 2, 1968, defendants' motion to dismiss the indictments herein is hereby GRANTED.

IT IS SO ORDERED.

(s) Charles R. Weiner  
J.

Filed, Jan. 4, 1968, John J. Harding, Clerk,  
By J. Dpty. Clerk



IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

Criminal Nos. 22709

22717

22718

UNITED STATES OF AMERICA, APPELLANT

v.

WILLIAM JOSEPH BURKE, SHERMAN CHADWICK KAMINSKY,  
JOSEPH FRANCIS NARDELLO, ISADORE WEISBERG,  
APPELLEE

NOTICE OF APPEAL TO THE  
SUPREME COURT OF THE UNITED STATES

I. Notice is hereby given that the United States of America, the appellant above named hereby appeals to the Supreme Court of the United States from the final judgment of the District Court for the Eastern District of Pennsylvania dismissing the indictment rendered against the above named defendants on January 2, 1968.

This appeal is taken pursuant to Title 18 United States Code, Section 3781.

II. The Clerk will please prepare a transcript of the record in this cause for transmission to the Clerk of the Supreme Court of the United States, and include in said transcript the following:

- (a) Indictment
- (b) All Motions, Briefs and other documents filed of record.
- (c) Opinion of the Court dated January 2, 1968.

III. The following questions are presented by the appeal:

- (a) Whether the phrase "unlawful activity" as defined in Title 18, United States Code, Section 1952 ap-

plies to the crime of blackmail as defined in the  
Pennsylvania Penal Code.

(a)

DREW J. T. O'KEEFE  
United States Attorney

(b)

ROBERT ST. LEGER GOGGIN  
Assistant United States Attorney

Filed January 30, 1968

**SUPREME COURT OF THE UNITED STATES****No. 1277, October Term, 1967****UNITED STATES, APPELLANT****v.****JOSEPH FRANCIS NARDELLO and ISADORE WEISBERG****APPEAL from the United States District Court for  
the Eastern District of Pennsylvania.****ORDER NOTING PROBABLE JURISDICTION—June 17, 1968**

The statement of jurisdiction in this case having been submitted and considered by the Court, probable jurisdiction is noted and the case is placed on the summary calendar.

